IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.899 OF 2000

Santosh @ Sonu Balram Jadhav)
Life Convict Prisoner No.C-11491)
Yeravada Central Prison)
Pune 411 006.).. APPELLANT
)(Org.Accused)

VERSUS

The State of Maharashtra)
(At the instance of Mulund Police)
Station)).. RESPONDENT
(Org.Complt.)

Mr.D.G.Khamkar, Advocate Appointed for the Appellant Accused.

Mrs.U.V.Kejriwal, Additional Public Prosecutor, for the Respondent State.

CORAM: V.G. PALSHIKAR AND SMT.NISHITA MHATRE, JJ.

DATED: 26TH APRIL 2005

ORAL JUDGMENT : (PER MHATRE, J.)

1. The Appellant-Accused impugns the judgment dated 21st July 2000 of the Additional Sessions Judge, Mumbai in Sessions Case No.1323 of 1998 who has found him to be guilty of the offence punishable under Section 302 of the Indian Penal Code. The Appellant has been sentenced to life imprisonment. However, he is entitled to set off for pre-conviction imprisonment.

2. The prosecution has sought to establish a case

against the Appellant of having committed a murder of one Rekha Raju Rathod. According to the prosecution, on the night of 5th September 1998, the Appellant went into the hut where Rekha was residing with her children, questioned her about her behaviour and demanded a meal from her. When Rekha refused to oblige the accused, he doused her with kerosene from the stove which was lying in the hut and set her ablaze by throwing a lighted match stick on her. The accused ran away from the hut. Rekha's neighbour saw her ablaze. She told her neighbour PW2 to inform her uncle PW5. Accordingly, PW2, PW5 and PW1, who was Rekha's cousin and who was informed of the incident by PW5, reached Rekha's hut immediately. PW1 and PW2 have heard Rekha saying that she was set ablaze by the Appellant. The Appellant was arrested and tried for the murder of Rekha. He has been convicted and sentenced to life imprisonment.

3. We have heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor. We have, with their assistance, scrutinised the entire evidence on record. We are unable to accept the submissions made on behalf of the Appellant and find that Sessions Court has committed no error by convicting and sentencing the Appellant.

4. The main contention raised by the learned

Advocate for the Appellant was that the investigation was biased. Out of the two dying declarations which were recorded, one dying declaration, which is at Exhibit 29, has been recorded by the Investigating Officer which, according to the learned Advocate, is contrary to law. He urges that the second dying declaration also cannot be accepted since the SEM who recorded the same did not ascertain the evidence of the deceased Rekha. The learned Advocate then submits that there is no motive for the Appellant to kill Rekha and it is unbelievable that any reasonable person would kill another only because he was refused a meal. The learned Advocate has relied on the judgment of the Supreme Court in the case of *Dalip Singh and others* vs. *State of Punjab*, **1997 SCC (Cri) 968** and the judgment of this Court in the case of *Shyamrao Vitthal Poiemwar* vs. *State of Maharashtra*, **2001 (4) Mh.L.J. 233** in support of his submissions.

5. PW1, who is the cousin of Rekha, has stated that she learnt of Rekha's burn injuries when her uncle PW5 told her of the incident approximately between 10.15 and 10.30 p.m. She has stated that she immediately when to Rekha's house which was at a walking distance of seven minutes from her own. She has deposed that Rekha was in a position to inform her that the incident occurred because the Appellant had poured kerosene on her and had

set her aflame with the help of a match stick. She has also stated that Rekha informed her that the Appellant had fled from the scene of offence. This witness has further testified to the fact that the deceased again repeated to her in the hospital that burn injuries were caused by the Appellant. The witness has spoken about the familiarity between the Appellant and the deceased and that the Appellant used to tease Rekha often. He also used to beat her, according to this witness. This deposition of PW1 has been corroborated by PW2 who is the neighbour of Rekha. He has stated that he saw Rekha in a burnt condition and that he and others in the neighbourhood attempted to extinguish the fire by dousing Rekha with water. Rekha requested him to inform her maternal uncle of the incident. He accordingly informed Babu Naik, PW5. PW2 has also said that Rekha informed him that she sustained the burn injuries on account of the acts of the Appellant. The witness has also admitted knowing of the Appellant’s visits to Rekha’s house. PW5, the uncle, has corroborated the story of PW2 and has stated that he informed PW1 of the incident. He has also been told by Rekha that she had been set ablaze by the Appellant. All the three witnesses are consistent in the testimony regarding the cause of the burn injuries. Each one of them has deposed to the fact that Rekha informed them individually the cause of the injuries suffered by her.

6. PW4 is the friend of the Appellant who accompanied him to the deceased's house on the night of the incident. He has stated that the Appellant wanted to seek an explanation from Rekha for not responding to his overtures. Besides, the Appellant feared that Rekha would become friendly with some other person and would not continue her intimacy with him. PW4 has stated that when they reached Rekha's room, the Appellant caught hold of her and struck her. He tried to intervene and separate the deceased and the Appellant. PW4 has stated that he returned to his room thereafter, while the Appellant remained with Rekha. While returning home, he met the Appellant's mother who inquired about the whereabouts of the Appellant. PW4 then went to the Appellant's house. However, the Appellant was not at home and approximately between 10.30 and 10.45 p.m. he saw the Appellant running towards his house crying out to his mother that Rekha was burnt. The mother of the Appellant asked him to leave the house immediately, which he did. In the cross-examination, this witness has denied the suggestion that the Appellant did not meet the deceased. Therefore, the testimony of this witness also is sufficient to establish the fact that Rekha and the Appellant were last seen together before Rekha was set ablaze.

7. Turning now to the two dying declarations left behind by Rekha; the first dying declaration has been recorded by the SEM, PW9. This dying declaration bears the thumb impression of the deceased. However, there does not appear to be any endorsement of the Doctor on the dying declaration. The witness PW9 has stated that before the dying declaration was recorded, the Doctor had certified, orally, that the deceased's statement could be recorded. This dying declaration which is at Exhibit 20 contains the same story as is made out by the witnesses for the prosecution. The deceased has stated that on the night of 5th July 1998 at about 10.00 a.m. the Appellant and his friend came to her house. The Appellant asked her why she was friendly with others and not him. He then demanded food and on her refusal he was enraged. He emptied the kerosene from the stove on her and set her ablaze. The deceased has also stated that after the incident, the Appellant fled from the scene. She has stated that when she was set ablaze she screamed for help and her neighbours tried to extinguish the fire by dousing her with water. Similarly, in the dying declaration recorded by PW13, the Investigating Officer which is at Exhibit 29, the deceased has repeated the same story. This declaration has been endorsed by the Doctor who is PW7. PW7 has deposed that although Rekha had suffered from 75 per cent burn injuries, she was fully conscious when she was brought

to the hospital and was well oriented while making her statement.

8. On a consideration of the evidence on record, including the two dying declarations, we have no doubt that the Appellant is the perpetrator of the crime and has rightly been convicted and sentenced by the Sessions Judge.

9. The learned Advocate for the Appellant has relied on the judgment of the Supreme Court in the case of *Dalip Singh* (supra) in support of his submission that the dying declaration should not be recorded by the police officer who conducts the investigation. In this judgment, the Supreme Court has held that the practice of the Investigating Officer himself recording the dying declaration during the course of investigation should not be encouraged. However, the Court has also cautioned that such declarations are not always untrustworthy. Therefore, the submission of the learned Advocate for the Appellant that the dying declaration recorded by the Investigating Officer should be discarded cannot be accepted. Furthermore, this declaration has not been recorded during the course of investigation but before the investigations began.

10. The judgment of the Division Bench of this Court

in *Shyramrao Poiemwar* (supra) also does not carry the case of the Appellant any further. In this judgment, the Division Bench has held that it is incumbent for the prosecution to place before the Court the evidence of the Medical Officer who examined the declarant and certified that the declarant was in a fit mental condition to make a dying declaration. In the present case, PW7 has deposed to the mental condition of the declarant and has categorically stated that she was conscious and well oriented while making the statement.

11. The learned Additional Public Prosecutor relied on the judgment of the Apex Court in the case of *Laxman* vs. *State of Maharashtra*, **2002 CRI.L.J. 4095** to submit that absence of certification by the Doctor as to the fitness of the mind of the declarant would not render the dying declaration unacceptable. The Supreme Court in this judgment has held that it is a rule of caution that there should be certification by a Doctor as to the mental condition of the declarant. The voluntary and truthful nature of the declarant can always be established in any other manner. The declarations when considered with the evidence of PW1 and PW4 indicate that there was some intimacy between the victim and the Appellant. The evidence of PW4 establishes the motive which the Appellant had for inflicting the injuries. The dying declarations are thus corroborated by the oral

testimony of the prosecution witnesses.

12. The submission of the learned Advocate for the Appellant that when the dying declaration was made before the SEM, there was no need to record a further dying declaration also is devoid of any merit. Merely because two declarations have been recorded, it would not necessarily mean that both have to be discarded. The dying declaration at Exhibit 20 recorded by the SEM, although does not bear any certification by the Medical Officer, shows that the SEM ascertained for herself that the declarant was in a position to make the statement.

13. On a consideration of the entire evidence before us and the law as brought to our notice, we have no hesitation in upholding the impugned judgment. The Sessions Judge has rightly convicted and sentenced the Appellant. Appeal dismissed.

14. The Appellant-Accused was represented before us by an Advocate appointed. The learned Advocate has taken adequate efforts to place the entire case of the accused before us. We, therefore, quantify the fees payable to the learned Advocate appointed for the Appellant at Rs.1,000/-.

(V.G. PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)